

Circuit Court of the United States,
District of Massachusetts,
In Equity.

Richard D'Oyly Carte

v.

John Clark

To the Honorable the Justices of the
Circuit Court of the United States
within and for the District of
Massachusetts.

Richard D'Oyly Carte, of London
England, brings this his bill of
complaint against John Clark
defendant, otherwise known as
Signor Brocolini, of
a citizen of the United States,
now commorant in Boston in
said District. And your orator
says :-

1. That he is and since be-
fore October last has been the
manager of a theatrical com-
pany, and the said defendant
upon the 22^d day of October 1879
made an agreement in writing,
a copy of which is hereto an-
nexed marked A, in which

it was agreed by and between your orator and the said defendant among other things as follows, viz. that the said defendant would sing and act as baritone, comedian, jive, smile character, old man etc, wherever required by your orator in the United States of America or in Canada during the continuance of an American Tour then about beginning of said theatrical company, or any extension or renewal thereof, and also that should there be a break in the summer your orator was to have the right to renew the engagement of the said defendant from the commencement of the autumn season of the year 1880 for the remainder of the said tour by giving to the said defendant notice to that effect at the commencement of the said break.

2. And your orator says that there was a break in the

summer, namely at and after the twenty first day of June 1880, and that at the commencement of said break your orator was ready and willing, and intended to renew, and did renew the said engagement of the said defendant by giving him a notice to that effect as required by said contract.

3. That the particular facts in regard to the giving of the said notice were as follows. At the time when it became your orator's duty to give such notice in order to hold the said Clark according to the provisions of the said agreement, your orator made diligent search and inquiry for the said Clark but was unable to find him or to ascertain his address other than number 1193 Broadway in the City of New York which was the general head-quarters and office of your orator's said theatrical company and business, and the place

at which all the business connected with the said company and the said tour was transacted, and particularly where it was the custom of said company that notices of renewal such as that given to the said Clark should be given; and that such facts were known to the said Clark, and that your orator not being informed of any other address of the defendant left his said notice to the defendant at said office Number 1193 Broadway, New York, addressed to the defendant, at the commencement of the said break as aforesaid; and he submits that said notice was effectual under said contract.

4. And your orator further says, upon information and belief, that the defendant avers and pretends that he has engaged himself to play and act during the said autumn of 1880 for other persons than

your orator, and also pretends and declares that he is not under engagement to your orator, and threatens and intends not to abide by and follow his said engagement and contract and the said renewal, but to violate and disregard the same and to act and sing for other persons and managers other than your orator.

5. And your orator says that the services of the said defendant are and will be of great and peculiar value to your orator; and that if the said defendant is permitted to and does carry out his said threats and intention, and his said pretended engagement to act and sing for other managers or persons, and does so act and sing, your orator will suffer great and irreparable injury and loss in his said business as manager, not reparable in damages.

6. And your orator prays that the defendant may be required to answer the premises under oath,

and that he may be restrained by an injunction of this Court from acting or singing for any other persons or managers than your ^{orator} after the commencement of the autumn season of 1880 and during the remainder of the said tour, or from in the meanwhile entering into any engagement so to do. And that he be enjoined to the like effect pending this suit, and that your orator may have such other and further relief as to your Honors may seem meet, and as the nature of the case may require.

7. And to such ends may it please your Honors to grant unto your orator writs of injunction conformable to the prayer of this bill, and also a writ of subpoena to be directed to the defendant commanding him at a certain time and under a certain penalty therein to be named personally to appear before this

Court, and answer this bill
and do and receive what to
your Honors may seem meet,

R. D'Oyley Carte

by Bromie Holwell Browne
Solicitor and of counsel.

- A -

Mr. R. D'Oyly Carte's Opera Companies.

Memorandum of Agreement

between RICHARD D'OYLY CARTE, of ^{11 Beaufort} ~~the Fifth~~

~~Buildings Strand London~~

~~Avenue Theatre, New York City~~, of the one part, and

John Clarke

known as Lignor Procolini of

of the other part

The said RICHARD D'OYLY CARTE, engages the said

John Clarke

to

sing and act

as

baritone, comedian, juvenile, character, old men, et.

whenever, and wherever required by the said R. D'OYLY CARTE, in the United

States of America, or in Canada, during

the continuance of the said R. D'Oyly

Carte's American tour or any extensions or renewals thereof. Should there be a break in the summer the said R. D'Oyly Carte to have the right to renew the engagement of the said John Clarke from the commencement of the autumn season 1880 for the remainder of the tour by giving him notice to that effect at to commence on or about December first 1879 the said John Clarke the commencement of the break. And the said John Clarke agrees so

to sing and act

to the best of his skill and ability.

In consideration of which the said R. D'OYLY CARTE agrees to pay to the said

John Clarke

a weekly salary

of Seventy-five dollars

or at such a rate

for any part of a week, and to convey the said John Clarke from London to New York City, and back to England should he wish to return with the company but not if he elects to remain in America

Should the said

John Clarke

be required to travel, the said R. D'OYLY CARTE to pay the transportation of the

said John Clarke

from New York City

on Tour, and back to New York City. Transportation does not include sleeping or

parlor-car fare, nor carriage to and from depot to theatre or hotel.

This Agreement is made subject to the Conditions, Rules and Regulations set forth

below, which the said

John Clarke

described as below as "the Artist," agrees to observe.

1.—The Artist is engaged exclusively for Mr. R. D'OYLY CARTE, and during the continuance of this Engagement will not perform, sing, dance, or otherwise exercise his or her talent in theatres, concert halls, churches, or elsewhere, either gratuitously or for his or her remuneration or advantage, or for that of any other person, or other Theatre or Establishment (although not thereby prevented from fulfilling his or her Engagement with Mr. CARTE,) without having first obtained permission, in writing, of Mr. CARTE.

and to make to the said John Clarke an allowance of ten dollars a week for his hotel expenses if required to perform out of New York during such time as he may remain out of New York.

and for each and every breach of this Rule, the Artist shall forfeit one week's salary, or his or her engagement, at the option of Mr. ^{the said Mr.} CARTE, but such forfeiture of one week's salary shall not be held to debar ~~Mr.~~ D'Oyly Carte from enforcing the fulfillment of this Agreement in such manner as he may think fit.

2—The Artist shall perform to the best of his or her ability whenever called upon, in any and every part assigned to him or her not incompatible with the line of business for which he or she may be engaged; and shall attend all rehearsals that may be called without payment.

3—No salaries will be paid for any nights or days on which the Artist may not be able to perform through illness or other unavoidable cause, and any Artist absenting himself or herself, except from illness or other unavoidable cause, will forfeit one week's salary, or his or her engagement, at the option of Mr. CARTE, and will also be held liable for any loss that may be sustained by Mr. CARTE owing to such absence. Illness to be accepted as an excuse, must be attested by a Medical Certificate, which must be delivered to Mr. CARTE, or his representative, as early as possible, and before the commencement of the performance. Should such absence exceed two weeks, the engagement may be cancelled at the option of Mr. CARTE.

4—The number of performances constituting the week's services shall be regulated by the custom governing the cities and theatres visited by the Company, but the salaries agreed on, in all cases, include matinees, should any be given.

5—All parts, written or printed, to be returned to Mr. CARTE, whenever notice to that effect is put up, and if not returned forthwith, the value will be charged the Artist.

6—No Artist to go into the front of the Theatre, or to address the audience, or to bring any one not engaged in the Theatre behind the scenes, without the express permission of Mr. Carte, or if doing so to forfeit a week's salary.

7—No Artist will be paid salary for any days on which the Theatre is not open, and no Salaries will be paid for rehearsals.

8—The payment of Salaries will be regulated by Mr. Carte's ability to have the performances take place nightly and consecutively during the season. Should any non-playing nights occur through accident or otherwise, salaries will not be paid for such nights, but Mr. Carte will allow the Artist the sum of Three dollars per day to defray the hotel bill during the time lost.

9—Any person being intoxicated, or swearing, or using obscene, abusive, or insulting language, or indulging in unseemly conduct, or smoking in the Theatre, shall forfeit a week's salary, or his or her engagement, at the option of Mr. Carte.

10—All character and fancy costumes, except fleshings, will be found by Mr. Carte. Modern walking or evening dress is to be provided by the Artist.

11—Notices from the Management posted at the Stage Door, or addressed to the Artist in charge of the Stage Doorkeeper, or sent to the Artist's last known address will be held to be valid notices.

12—Every Artist or Person engaged in any capacity, must have his or her address entered in the Stage Doorkeeper's Book, and apprise him of any change of address. Any Artist, not in the first piece of the day, who may expect to be absent from his or her residence for any number of hours, is required to leave notice where he or she may be found in case of emergency. No Artist shall absent himself or herself from the City in which the Company may be performing, even when not engaged in the performance, without MR. CARTE's consent.

FINES.

For being late at Rehearsal without permission, 5 per cent. on amount of weekly salary.

For leaving Rehearsal without permission, 5 per cent. on amount of weekly salary.

For being absent from Rehearsal without permission, 10 per cent. on amount of weekly salary, or should such absence be twice repeated during the Rehearsals of any one piece, the Engagement may be cancelled at the option of MR. CARTE.

For being late for Performance, or late on stage in any scene, or keeping the stage waiting, half a week's salary.

For being absent from Performance, see Clause 3.

13—No Artist shall alter the words or business of his or her part, or introduce other words, without express permission of MR. CARTE, or shall forfeit half week's salary for each and every infringement of this Rule.

14—Any Engagement is terminable immediately at the option of Mr. Carte, on any complaint made of the Artist by the authorities, or in case of the license being with-drawn, or in case of the Theatre being closed from fire, national calamity or *force majeure*.

In Witness Whereof, the parties hereto have set their hands this 22nd

day of October 18 79
(signed) John Clark.

" R. D'Uzly Carte.

And the parties hereto further find themselves to execute a duplicate of this engagement immediately on arrival in New York and to do whatever may be necessary to make this agreement legally binding in America.

(signed) John Clark.
" R. D'Uzly Carte.

MR. F. DOYLE CARTE'S
OPERA COMPANIES, &c

*American Tour
John B. Carter*

Memorandum of Agreement.

Oct. 1. 1880. - Friday 1435
C. D. Copy to G. A. H.

John ^u to Park.

Received
1880.

Dr
To \$ 80
DE 1.20
W. G. 200
Bank 90
X 10.50
Dec. 300
710.40

debit was
to John
done was
Aug 24th 1880
cut
notes left
Sept 6, 1880
after
at 10 a.m.

Bank

Circuit Court of the United States
District of Massachusetts
in Equity

R. D. O'Flynn & Co.

John Clarke

~~City and County of New York~~
City and County of New York ss.:

John Lenoir of lawful age being
duly sworn deposes and says
I am 21 years of age and
am now temporarily residing
in New York City. I am the
agent and representative of R.
D. O'Flynn & Co. in the United States
for the management of his
company engaged to perform
operas composed and written
by Messrs W. S. Gilbert and
Arthur Sullivan in the United
States and Canada. I am
entirely familiar with the
contract between Mr O'Flynn
and John Clarke, professionally
known as Signor Brocolini.
On several occasions during
the month of May and the
early part of the month of
June 1880 Mr Clarke called

at the office of the company
in New York, No 1193 Broadway,
of which I was then in charge,
Mr Bartle being absent in
England on business, to
enquire about the renewal of
his engagement with Mr
Bartle. I informed him
that by the contract Mr
Bartle was not called upon
to give him any notice until
the end of the regular season,
and the commencement of
the break, which would not
take place till the close of
the company's engagement in
Chicago June 20th 1881. But at
Mr Bartle's urgent
request I cabled early in
June to Mr Bartle to ask him
what he intended to do
about the renewal of Mr
Bartle's engagement. Mr
Bartle replied by cable that
he intended to sail for the
United States in the steamship
Gallia which would leave
on Saturday June 12th and

would puzzle with Mr Clarke
on his arrival. I immediately
upon receipt of that despatch
wrote to Mr Clarke as follows:-

"June 4, 1880. Dear Mr. Brocolini. Mr.
"Barte cables he is coming by
"the Gallia so he will see
"you on his arrival and
"arrange. You must hold over
"till then Yours truly [signed] Helen Lewis."

This letter was sent to Mr
Clarke at the stage door of
the 5th Ave Theatre in New
York where he was then per-
forming. The next day he
came to the office 1193 Broadway
and acknowledged the receipt
of my letter. I told him
that Mr Barte would be in
New York when the company
returned thence from their
Chicago engagement and that
he could at that time see
Mr. Barte and learn about the
renewal. To all this he made
no objection.

I next saw Mr. Clark about
the 8th or 9th of July, when he
called at our office 1193
Broadway and when I handed

him a formal notice of renewal which had been written by Mr. Barte shortly after his arrival in New York, and left with me at said office to be given to Mr. Clark should he call.

I have read the affidavit of Mr. Barte in this suit and can confirm the truth of his statements in regard to the pains taken by Mr. Barte to ascertain Mr. Clark's address or whereabouts, inasmuch as all the correspondence, telegraphing & therein referred to passed through my hands or came under my supervision.

I also pointed out to Mr. Barte Mr. Clark's advertisement in the "Mirror" during May 1880 in which, under his professional signature of Signor Brocolini ~~he~~ he represented that he was then engaged, and sought our engagement for

5.
the season of the autumn
and winter of 1880-81.

Subscribed and sworn
to this 30th day of Aug 1880 Aden Senor
before me

Geo. V. Renshaw

Notary Public

City and County of New York



1435
Richard & Wm. G. Bate

7.

John & Sarah

affair of
Helen & Sarah

UNITED STATES OF AMERICA.

Massachusetts District, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To

John Clark, otherwise known as
Signor Brocolini of
a citizen of the United States now commorant
of Boston in said District
Your Agents and Servants, GREETING.

WHEREAS

Richard D'Orly Carte of
London, England

has exhibited his Bill of Complaint before the Justices of our Circuit Court of the
United States for the First Circuit, begun and holden at Boston, within and for the District
of Massachusetts, on the *fifteenth* day of *May* A.D. 18*80*, against you the said

John Clark otherwise known as Signor Brocolini

praying to be relieved touching the matters therein complained of, and whereas, by an Order
from said Court, made on the *seventh* day of *August* A.D. 18*80*,
it was ordered that a Writ of Injunction issue under the Seal of the said Court, to restrain you
and each and every of you, from doing all the matters and things from the doing of which you
are prayed to be restrained in said Bill, according in full with the prayer of said Bill.

WE therefore, in consideration thereof, ENJOIN AND COMMAND you each, and
every of you that from and immediately after the receipt and notice of this our Writ, by you,
or any of you, you shall not *sing or act as baritone, comedian &c*

in the United States of America or in Canada,
during the continuance of an American Tour
of the theatrical company of which said Carte
is Manager, after the commencement of the
autumnal season of 1880 for any other persons or
managers than said Carte or enter into any engagement
so to sing or act reference being had to an agreement between the
parties annexed to said bill of complaint in the terms and
condition in regard to said Tour — until the further order of court

WHEREOF you are not to fail on pain of ten thousand dollars, to be levied on your and
each of your goods, chattels, lands and tenements, to our use.

Witness the Honorable *Morrison W. Waite*, at Boston,
this *seventh* day of *August* in the year of our Lord one thousand
eight hundred and *seventy eighth*

Alfred H. Townbridge, Deputy Clerk.

United States of America, }
MASSACHUSETTS DISTRICT, ss. }

I HEREBY CERTIFY that I have notified the within-named respondent

Done, sufficient and legal
Boston Aug 9th 80
service of the within certificate
there is hereby acknowledged
John W. Cook

Richard D. Dwyer, Comte
IN EQUITY,

versus
John Clark

WRIT OF INJUNCTION.

August 7. 1880

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Brown, Holmes & Brown

UNITED STATES OF AMERICA.

Massachusetts District, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Marshal of our District of Massachusetts, or to either of his Deputies,

GREETING :

WE COMMAND YOU that you Summon *John Black,*
otherwise known as Signor Brocolini
of *a citizen of the*
United States, now commorant in
Boston in said District

(if he may be found in your precinct)

to appear before the Circuit Court of the United States, to
be holden at Boston, within and for the Massachusetts District, on *Saturday the seventh*
day of *August*, *A.D. 1880* at ten o'clock, A. M., then and there to show
cause, if any he ha, why an injunction should not issue against him as prayed
for in the Bill of Complaint of *Richard D. O'Byrne & Co., of*
London, England,

this day filed in the office of the Clerk of said Circuit Court.

HEREOF FAIL NOT, and make due return of this Writ, with your doings
thereon, into our said Court.

Witness, the Honorable

Morrison R. Waite
at Boston aforesaid, the *thirty first* day of *July*
in the year of our Lord one thousand eight hundred and ~~seventy~~ *eighty*

CLERK.

948

1435

In Equity,

Richard D. O'Byrne

vs.
J. H. Barker, otherwise
known as Sigmar
Brooklyn

SUMMONS TO SHOW CAUSE.

RETURNABLE, August 4th 1880.
at 10 o'clock A. M.

Carson, Holmes & Brown
Attorneys

to appear before the Circuit Court as within directed by
delivering to him
we have a duly attested copy of the check
U. S. Marshal.
W. J. Banks
Feb. 2 -
Copy 1.24
\$324

United States of America, {
MASSACHUSETTS DISTRICT, SS.
Pursuant herunto, I this day summoned the within named
also arrested
Clark
1880
1880

C. C. U. S. 3
Mass. Dist. 3 Oct. 5, 1880

No 1435

Carte v. Clark

Complete Costs

Bill, entry
Mortgage fees, Service &c.

5.00
6.48

Tr. 2 Terms @ 2.64

5.28

Att: " " " 33

.66

Tr. & att. ret. day Sums.

2.97

8.91

Continuance 1 Term

.30

Clark's fees: Fil. 80

D.E. 1.20

D.F. 2.00

Comm. at R. 90

Dec. .50

Dec. 5.00

7. 10.40

10.40

Atty fee

20.00

Disjunction

1.00

\$ 52.09

Feb 1, 1881

1435-

Compt's Cash—

UNITED STATES OF AMERICA.

Massachusetts District, ss.

To John Black, otherwise known
as Signor Procolini, of
a citizen of the United States, now commorant
in Boston in said District

GREETING:

FOR CERTAIN CAUSES, offered before the Circuit Court of the United
States of America, for the first Circuit, within and for the Massachusetts District, as
a Court of Chancery, WE COMMAND AND STRICTLY ENJOIN YOU, laying all other
matters aside, and notwithstanding any excuse, that you personally be and appear
before our said Circuit Court at the Rules, to be holden at the Office of the Clerk
of our said Court, in Boston, in said District, on the first Monday, being the
sixth day of *September* next, to answer to a Bill
of Complaint exhibited against you in our said Court, wherein

Richard D. Glynn, of London,
England.

W Complainant and you are Defendant ;
and to do further and receive that which our said Circuit Court shall consider in this
behalf. And this you are in no wise to omit, under the pains and penalties of what
may befall thereon.

Witness, the Honorable MORRISON R. WAITE, at Boston, this
day of *July* A. D. 188 *0* in the one hundred and
year of the Independence of the United States of America.

Thos. H. Wilson
Clerk.

MEMORANDUM. The defendant is to enter his appearance in the suit in the
Clerk's Office on or before the day at which the writ is returnable, otherwise the bill
may be taken *pro confesso*.

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In Equity.

Richard D. O'Byrne & Co.



v.

John Black, otherwise
known as Signor
Procolini

SUBPOENA,

RETURNABLE, *Sept* RULES,
To wit, *Sept. 6th* 1880.

James Holmes & Brown

Attorneys

United States
Marshal.

W. J. Banks

*Per. 2-
Copy 1-24
No. 3.24*

delivering a duly attested copy of this
process to said Black alias Procolini

1880

United States of America, } *Arthur July 31*
MASSACHUSETTS DISTRICT, SS. }

I hereby certify that I have served the within Subpoena by

Mr. O'Byrne

Circuit Court of the United States
District of Massachusetts

In Equity.

R. Dwyly Carte

vs.
John Clarke

N. C. Husted, of lawful age,
being duly sworn, deposes and
says -

I am 37 years of age,
and reside in the city of New
York - I am by profession theatrical
manager, and in that capacity had
charge of Mr R. Dwyly Carte's opera
company at Chicago, Illinois, in
their engagement at that city for
the week beginning June 14th of
this company Mr John Clarke,
professionally known as Signor
Brocolini, was a member.

On Friday of that week
during performance, Mr Clarke
asked me if possible to arrange
for him to stop over at Rochester
N.Y. for a day or two to see some
friends, on his way to New York
city. I told him I would endeavour
to do so. On Monday morning June

21st, when I met Mr Clarke and the other members of the company at the depot in Chicago. I gave Mr. Clarke his railway ticket, telling him to wait for me at Buffalo, N.Y. the next morning at eight o'clock, where I would arrange with the railway for his stop-over. The next morning, on my arrival at Buffalo at the time named, Mr. Clarke did not appear, and I was informed by another member of the company that he (Clarke) had gone on by an early train.

I did not see or hear from Mr. Clarke again till I met him in New York City on Friday, July 9th at a rehearsal.

Except as I have stated, Mr. Clarke said nothing to me of any intention of his not to come to New York. He did not give me any address of his at Rochester, nor request that he should be communicated with there, or did he in any way lead me to think that he did not fully intend, as he said, to come on to New York in a day or two.

I can and do confirm the statement which I have read, of Mr. Carte, in his affidavit in this suit that enjoining was made, when Mr. Clarke failed to appear in New York, of his brother, Mr. E. Clarke, as to his (Mr. John Clarke's) whereabouts. Such enjoining was made in my hearing.

I also can and do confirm the statement of Mr. Carte, in his said affidavit, as to Mr. Clarke's or ~~supra~~ "Procolini's" advertisement being inserted in the "Mirror" dramatic newspaper. I saw the said advertisement in the "Mirror", at a date some weeks previous to Mr. Carte's arrival in this country, June 25th.

H. C. Husted

United States of America,
State & Dist. of Massachusetts, ss.
County of Suffolk.

At Boston in said District this 30th day of July A. D. 1880, personally appeared the above named H. C. Husted and made solemn oath that the foregoing statements by him subscribed are true, Before me

J. Henry Taylor
Notary Public.

Dr. A. B. 4th Route

1435

John Mack

Affiant of
C. L. B. B. B.

Circuit Court of the United States
District of Massachusetts.

In Equity Oct. Term 1880

Richard D. Ogly Carte
Complainant

v.
John Clark
Defendant.

Decree
February 1, 1881

This cause came on to be heard at this present term upon the pleadings and proceedings and upon motion of counsel for Complainant for entry of decree and now, upon consideration thereof, to wit: February 1, 1881, it appearing to the Court that the bill of complaint at the December Rules of this Court, to wit: December 6, 1880 an order was entered taking the bill of complaint pro confesso for want of appearance and answer. It is ordered, adjudged and decreed that a perpetual injunction issue restraining and enjoining the defendant from acting or singing for any other persons or managers than the Complainant after the commencement of the autumn season of 1880 and during the remainder of the said tour as prayed in said bill and provided in the contract forming part thereof. And it is further ordered that the Complainant recover from the defendant the sum of one dollar as damages and his costs of suit taxed at fifty two dollars and some cents.

By the Court & Clerk
Wm. H. Brewster
Deputy Clerk

Amel Dece
May 1, 1881

Circuit Court of the United States,
District of Massachusetts,
In Equity.

R. D'Oyly Carte

v.

John Clarke.

State of New York
City and County of New York ss. —

R. D'Oyly Carte of lawful age
being duly sworn deposes and
says as follows.

I am 35 years of age, and
am now temporarily residing
in New York. I am a theatrical
manager by profession and
have been engaged for more
than a year hitherto in man-
aging and superintending the
production of operas written and
composed by Messrs. W. G. Gilbert
and A. S. Sullivan, and the
companies performing the same
in England and the United
States. In October, 1899, in the
course of my said business,
I made with Mr. John Clark,
professionally known as Signor
Brocolini, a contract in writing,
of which a true copy is annexed

to the bill of complaint in this
suit. Under this contract
Mr. Clark played in the United
States from December 1879 to
June 21st 1880. At this latter
date there occurred what is
called in the contract "a break",
that is, an interval covering
the summer or hot season, dur-
ing which performances are
usually omitted and salaries
do not run. When this break
occurred, the company of
which Mr. Clark the defendant
was a member, had just
finished playing at Chicago,
Illinois, the term of engage-
ment there ending after the
night of Sunday June 20th.

Several times in the month
previous and in the early
part of June while I was
absent in England upon bus-
iness, Mr. Clark called upon
my representative in New York,
Miss Helen Lenoir, at the
head office of the company
No. 1193 Broadway and stated

that he felt anxious about his re-engagement by me after the "break" referred to. Miss. Lenoir, although fully aware of the provisions of the contract, that no notice was called for until the commencement of the break nevertheless, at the urgent request of Mr. Clark, cabled to me that he was desirous to know about his re-engagement to which I replied by cable that I was to sail for New York by the steamship Gallia, and would settle with Mr. Clark on my arrival in New York. Upon receipt of this despatch, Miss. Lenoir wrote to Mr. Clark as follows

"Mr. Clark cables he is coming by the Gallia so he will see you on his arrival and arrange. You must hold over till then
[signed] Helen Lenoir"

This letter I am informed was sent to Mr. Clark at stage door of the Fifth Avenue Theatre in New York where

ness then performing, and was received by him, and he offered no objection and spoke no further about the matter (as appears from the affidavit of Miss. Lenoir filed herewith).

I reached New York by the Gallia on the evening of Monday June 21st and reached my office about ten o'clock on the morning of the following day. The company of which Mr. Clark was a member had I knew in the meanwhile gone to Chicago for a week's engagement, ending June 20th, and closing the regular season. I also knew that the company would immediately return to New York, inasmuch as I was under contract with them to furnish them with transportation thence from Chicago, and also because I knew that many of those not re-engaged were to be sent back by me to England, upon the

Steamer sailing Wednesday, June
23^d. On Wednesday morning
all the company, except Mr.
Clark met me in New York
(having arrived from Chicago
the night before) and I made
my arrangements with them.
I had enquiries made as to
Mr. Clark, and was informed
by Mr. H. B. Husted, my acting
manager, who had come with
the company from Chicago, that
Mr. Clark had told him (Husted)
that he (Clark) would stop
over in Rochester, New York, and
would come on to New York
City in a day or two, and
Mr. Clark asked Mr. Husted
to arrange for him to be al-
lowed by the railway company
to make such a "stop over" on
his ticket. Although expect-
ing that Mr. Clark would
come on to New York in a
day or two as he said, and
that I should meet him
and notify him personally.
I took the additional precau-
tion of writing that ~~I had~~

~~arranged with the other mem-~~
~~bers of the company,~~ the fol-
lowing formal notice of re-
newal to Mr. Clark.

"June 23 '80 Dear Brocolini, In ac-
"cordance with the stipulations
"of the memorandum of agreement
"between us dated October 22nd 1879,
"I hereby give you notice that I renew
"your engagement for the re-
"mainder of the American Tour from
"or about September 13th 1880 at which
"time the autumn season will commence.
"Yours faithfully [signed] R. D. Ogley Bart.
"To John Brocolini Esq."

This notice was left for
him at the office of The
Company 1193 Broadway, as
Mr. Husted told me he had
not been informed by Mr.
Clark of any address in Roch-
ester, and as I fully expected
that Mr. Clark would be in
New York in a day or two
he said.

But after waiting several
days, as Mr. Clark did not
appear, and as I had heard
nothing from or concerning
him, I made enquiry as to him

probable or possible whereabouts,
of his brother, Mr. E. Clark, and
of Mr. ~~Clark~~ White, a clerk in
our office and an intimate
friend of Mr. Clark, and after some
days got from them two ad-
dresses, to each of which I
telegraphed as soon as I received
them, namely July 5th. From
one of them I received a telegram
in reply July 5th from Mr.
Clark that he would be in
New York the next day or
the next day but one. I there-
upon wrote to Mr. Clark as
follows:-

"Dear Brooklyn, I received your
" telegram to-day. We could not
" find out what had become of
" you till your brother gave us
" the Rochester address and I
" wanted to send you the letter
" respecting your autumn en-
" gagement which is lying here
" for you. I won't send it on
" now as it may miss you.
" I shall expect you to-morrow
" or Wednesday. Yours faithfully
" (signed) R. Doyle Card. J. Brooklyn

"P.S. On consideration I send
"you enclosed copy of letter
"in case your starting is
"delayed"

When Mr. Clark reached
New York and called at my
office he informed my agent
Miss. Lenoir that he had
received the notice of renewal,
and after a short talk on
general subjects he went away.
The next day he called and
informed me that on the
twenty third of June he had
made another engagement
with another manager for
the autumn season, not hav-
ing received from me any
notice of renewal. I told him
fully of all that I had done
and of my efforts to find
and communicate with him,
and that his absenting him-
self from me, and keeping
his whereabouts concealed, was
the cause of his not having
received the notice of renewal,
and that I considered him

engaged and should hold him to his contract. Since I reached the United States June 21st I have seen in the "Mirror" a theatrical newspaper published in New York, and devoted to the stage, an advertisement by Mr. Clark, under his professional name of Signor Brocolini that he was disengaged for the ensuing autumn and winter season and was open to engagement for that time. This advertisement appeared in the "Mirror" during the month of May 1880, in the form of the notice here-
to annexed marked "A" which was taken from the issue of said
"Mirror" of date of May 8th 1880. I was also informed by the manager with whom Mr. Clark has made his subsequent engagement, that Mr. Clark approached him on the subject of engagement, and that the terms of said engagement were named before the date of my arrival in New York, and before the commencement of the "break", and that Mr. Clark personally executed and signed the said agreement at the office of the

said manager in New York City,
some time about the twenty
third day of June. I was
greatly surprised to hear this,
inasmuch as I was entirely
ignorant of Mr. Clarke's pres-
ence in New York at that
time or of his whereabouts.

Subscribed and sworn
to this 30th day of July
A.D. 1880. before me

Rd Doyle Carto

Geo. Y. Renshaw

Notary Public
City and County of New York



A. SIGNOR BROCOLINI,
PRIMO BASSO.
Late of Her Majesty's Opera, London, and
the principal oratorio and concert perform-
ances in England during the past five years,
can be engaged for next season for English or
Italian Opera, etc., by responsible managers.
Address care of NEW YORK MIRROR.

1435
Richard D. Ogby & Co

v.

John Leach

Applicant of
Richard D. Ogby & Co

